

UNITED STATES DISTRICT COURT		District MASSACHUETTS
Name of Movant JUAN H. MERCADO	Prisoner No. 24215-038	Case No. 1:02 CR 10146-001
Place of Confinement F.C.I. RAY BROOK, P.O.BOX 9007, RAY BROOK, N.Y. 12977		
UNITED STATES OF AMERICA	V.	JUAN H. MERCADO (name under which convicted)
MOTION TO VACATE		
1. Name and location of court which entered the judgment of conviction under attack <u>U.S.D.C. MASSACHUETTS</u> <u>ONE COURTHOUSE WAY, BOSTON, MASSACHUETTS</u>		
2. Date of judgment of conviction <u>4/29/03</u>		
3. Length of sentence <u>188 MONTHS</u>		
4. Nature of offense involved (all counts) <u>21 U.S.C. §846 CONSPIRACY TO DISTRIBUTE HEROIN</u> <u>21 U.S.C. §841 (a)(1) DISTRIBUTION OF HEROIN, 21 U.S.C. §841 (a)(1) DISTRIBUTION OF</u> <u>HEROIN. 3-COUNTS...</u>		
5. What was your plea? (Check one) (a) Not guilty <input type="checkbox"/> (b) Guilty <input checked="" type="checkbox"/> (c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details: <u>N/A</u>		
<u>N/A</u>		
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input type="checkbox"/> <u>N/A</u> (b) Judge only <input type="checkbox"/>		
<u>MAGISTRATE JUDGE</u> <u>Swartwood</u>		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/> <u>N/A</u>		
8. Did you appeal from the judgment of conviction? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<u>WAIVER FOR: 1</u> <u>NOT ISSUED</u> <u>NOT FILED</u> <u>F.O.N.</u> <u>1/8/04</u>		

9. If you did appeal, answer the following:

(a) Name of court _____ N/A
(b) Result _____ N/A
(c) Date of result _____ N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____ N/A
(2) Nature of proceeding _____

(3) Grounds raised _____ N/A

N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____ N/A
(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____ N/A
(2) Nature of proceeding _____

(3) Grounds raised _____ N/A

N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result _____ N/A

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No
(2) Second petition, etc. Yes No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

N/A

N/A

N/A

N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: PETITIONER CHALLENGES LEGALITY OF CONVICTION, SENTENCE AS PETITIONER WAS DENIED UNDER THE DUE PROCESS OF THE LAW CLAUSE HIS LEGAL RIGHTS TO AN APPEAL...

Supporting FACTS (state *briefly* without citing cases or law)

THIS PETITIONERS ATTORNEY COERCED THIS DEFENDANT INTO NOT SEEKING AN APPEAL OF HIS SENTENCE, VIOLATING DEFENDANTS CONSTITUTIONAL RIGHTS OF TRIAL PROCEEDINGS. ALSO THE ATTORNEY SHOWED LITTLE OR NO INTEREST IN THIS PETITIONERS CASE AND MADE IT CLEAR OF WHICH HE DID NOT WANT TO BE BOTHERED IN ANY SHAPE, WAY, OR FORM WITH FURTHER COURT PROCEEDINGS... THIS CASE DOCKET# 1:02 CR 10146-001 SHOULD BE VACATED AND REMANDED:

B. Ground two: THIS PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHTS TO A FAIR TRIAL, AS TO EFFECTIVE ASSISTANCE OF COUNSEL BY FAILURE TO ARGUE AGAINST CAREER CRIM. STATUS:

Supporting FACTS (state *briefly* without citing cases or law) THIS ATTORNEY A FEDERAL PUBLIC OFFICE DEFENDER DID NOT ATTEMPT TO CHALLENGE THE IMPROVISION OF THE CRIMINAL CAREER ACT IN THE SENTENCE OF DEFENDANT, TO PROPER GUIDELINES. THIS PUBLIC DEFENDER SHOWED NO INTEREST OR LITTLE CONCERN IN REPRESENTING HIS CLIENT, JUAN H. MERCADO, WHEREAS TO ENSURE THAT A JUST AND FAIR SENTENCE WAS SET FORTH IN ACCORDANCE TO GUIDELINES...

THIS CASE DOCKET# 1:02 CR 10146-001 SHOULD BE VACATED, SET ASIDE, REMANDED TO COURT:

C. Ground three: THE DUE PROCESS OF THE LAW CLAUSE WAS VIOLATED UPON THIS PETITIONER AS TO A FAIR TRIAL (SIXTH U.S. CONSTITUTIONAL AMENDMENT) ATTORNEYS FAILURE, POINTS REDUCTION

Supporting FACTS (state *briefly* without citing cases or law) THIS FEDERAL PUBLIC DEFENDER MADE ONLY A FEEBLE ATTEMPT TO SET FORTH ARGUES, RELATING TO A REDUCTION OF POINTS SET FORTH BY THE PRESENTENCE INVESTIGATION REPORT, PRESENTED TO THE DISTRICT JUDGE, WHEREAS, A SENTENCE REGARDING ENHANCED, ADDITIONAL POINTS WERE SET FORTH AT SENTENCING, ABOVE REQUIRED GUIDELINES. (INCOMPETENT FEDERAL PUBLIC DEFENDER) SET ASIDE, VACATE, REMAND...

THIS PETITIONER CHALLENGES HIS CONVICTION AND SENTENCE OF ITS LEGALITY DUE TO FACT OF ILLEGITIMATE ATTORNEYS MISCONDUCT. THIS CASE SHOULD BE VACATED, REMANDED TO COURT:

D. Ground four: THIS PETITIONER DUE PROCESS OF A FAIR TRIAL PROCEEDINGS WERE VIOLATED WHEREAS DUE TO AN IMPARTIAL HEARING IN DEFENDANT'S PROCEEDINGS, BY PUBLIC DEFENDER...

Supporting FACTS (state *briefly* without citing cases or law) DUE TO SITUATIONS BEYOND DEFENDANTS CONTROL, THIS PETITIONER WAS NOT TRANSPORTED FROM HIS DETENTION TO THE COURT ON AN TIMELY BASIS, WHEREAS THIS CAUSED THE DISTRICT JUDGES SCHEDULE DISRUPTED, WHEREAS HER APPEARANCE WAS AN UNPLEASANT ONE, AS THE COURT TRANSCRIPTS WOULD PROVE BEYOND DOUBT UNREASONABLE, WHEREAS THIS FEDERAL PUBLIC DEFENDER CAREED LESS, WHEREAS DUE TO FACT OF THE FEDERAL PUBLIC DEFENDERS MISCONDUCT, REGARDING MISCOMMUNICATIONS TO BE MOTION ED, WHEREAS THIS DISTRICT SHOWED NO LEINIENCY TOWARD DEFENDANT'S TRIAL: VACATE, REMAND: DOCKET# 1:02 CR 10146-001 COURT TRANSCRIPT, OBTAINED, WILL PROVE, SHOW, MISCONDUCTS...

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

N/A

N/A

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing PUBLIC DEFENDER MR. MELVIN NORRIS, ESQ.

DUE NON-CONTACT ADDRESS UNKNOWN OF PRESENT RESIDENCE, ONLY MASSACHUETTS DISTRICT COURT

(b) At arraignment and plea SAME

(c) At trial SAME

(d) At sentencing SAME

(e) On appeal _____ N/A _____

(f) In any post-conviction proceeding _____ N/A _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____ N/A _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A _____

(b) Give date and length of the above sentence: _____ N/A _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

PRO SE

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(Date)Juan M. Ucado_____
Signature of Movant

PRO SE